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**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Part 103**

**[CIS No. 2645-19; DHS Docket No. USCIS-2019-0006]**

**RIN 1615-AC36**

**Registration Fee Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of**

**Cap Subject Aliens**

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security (DHS) is proposing to amend its regulations to require petitioners seeking to file H-1B cap-subject petitions to pay a \$10 fee for each registration they submit to U.S. Citizenship and Immigration Services (USCIS) for the H-1B cap selection process.

**DATES:** Written comments must be submitted on this rule on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments on the Paperwork Reduction Act section of this rule (the information collections discussed therein) must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by DHS Docket No. USCIS-2019-0006, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow this site's instructions for submitting comments.
- Mail: Samantha Deshommes, Chief, Regulatory Coordination Division, Office of

Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW, Mailstop #2140, Washington, DC 20529-2140. To ensure proper handling, please reference DHS Docket No. **USCIS-2019-0006** in your correspondence. Mail must be postmarked by the comment submission deadline. Please note that we will not accept any comments that are hand delivered or couriered. In addition, we will not accept any comments that are on removable media (e.g. thumb drives, CDs, etc.). All comments that are mailed must be addressed as specifically written above.

**FOR FURTHER INFORMATION CONTACT:** Brian J. Hunt, Acting Chief, Business & Foreign Workers Division, Office of Policy & Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529-2140, telephone (202)-272-8377.

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## **I. Public Participation**

DHS invites all interested parties to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. Comments providing the most assistance to DHS will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports the recommended change.

Instructions: All submissions should include the agency name and DHS Docket No. USCIS-2019-0006 for this rulemaking. Providing comments is entirely voluntary. Regardless of how comments are submitted to DHS, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov> and will include any personal information provided by commenters. Because the information submitted will be publicly available, commenters should consider limiting the amount of personal information provided in each submission. DHS may withhold information provided in comments from public viewing if it determines that such information is offensive or may affect the privacy of an individual. For additional information, please read the Privacy Act notice available through the link in the footer of <http://www.regulations.gov>.

Docket: For access to the docket, go to <http://www.regulations.gov> and enter this rulemaking's eDocket number: USCIS-2019-0006.

## **II. Background**

DHS is proposing to amend its regulations to charge potential petitioners a fee for each registration submitted for the H-1B cap selection process. Proposed 8 CFR 103.7(b)(1)(i)(NNN). On January 31, 2019, DHS published a final rule requiring petitioners seeking to file H-1B cap-subject petitions, including those eligible for the advanced degree

exemption, to first electronically register with USCIS during a designated registration period, unless the requirement is suspended (“H-1B registration final rule”).<sup>1</sup> The H-1B registration final rule amended DHS regulations to codify the new registration requirement. *See* 8 CFR 214.2(h)(8)(iii)(A)(I). USCIS stated in the H-1B registration final rule that it was suspending the registration requirement for the fiscal year 2020 cap season to complete required user testing of the new H-1B registration system and otherwise ensure the system and process work correctly.

Once USCIS implements the system and requires registration, USCIS will not consider an H-1B cap-subject petition to be properly filed unless it is based on a valid registration selection for the applicable fiscal year. *See* 8 CFR 214.2(h)(8)(iii)(A)(I) and (h)(8)(iii)(D). USCIS will reject or deny H-1B cap-subject petitions that are not properly filed. 8 CFR 214.2(h)(8)(iii)(D).

### **III. Legal Authority**

The Immigration and Nationality Act (INA) authorizes DHS to establish and collect fees for adjudication and naturalization services to “ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants.” INA section 286(m), 8 U.S.C. 1356(m). Through the collection of fees established under that authority, USCIS is primarily funded by immigration and naturalization fees charged to applicants, petitioners, and other requestors. *See* INA sections 286(m) and (n), 8 U.S.C. 1356(m) and (n); 8 CFR 103.7(b)(1)(i) (USCIS fees). Fees collected from individuals and entities filing immigration benefit requests are deposited into the Immigration Examinations Fee Account (IEFA) and used to fund the cost of processing

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<sup>1</sup> *See* 84 FR 888 (Jan. 31, 2019).

immigration benefit requests.<sup>2</sup> Consistent with that authority and USCIS's reliance on fees for its funding, DHS is proposing a fee for submitting H-1B registrations.

#### **IV. Proposed Fee**

DHS is proposing a \$10 fee for each registration submitted to register for the H-1B cap selection process. Proposed 8 CFR 103.7(b)(1)(i)(NNN). DHS regulations require petitioners seeking to file H-1B petitions subject to the regular cap, including those eligible for the advanced degree exemption, to first electronically register with USCIS during a designated registration period, unless the registration requirement is suspended. *See* 8 CFR 214.2(h)(8)(iii)(A)(I). When registration is required, an H-1B cap-subject petition must be based on a selected registration for the named beneficiary for the applicable fiscal year to be considered properly filed. 8 CFR 214.2(h)(8)(iii)(A)(I) and (h)(8)(iii)(D). Because USCIS operations are funded by fees collected for adjudication and naturalization services, and USCIS must expend resources to implement and maintain the registration system, DHS is proposing a fee for submitting H-1B registrations to recover those costs. Generally, DHS sets USCIS fees based on the revenue needed to recover the full cost of all USCIS operations, absent any known Congressional appropriations. *See generally* 81 FR 73292 (Oct. 24, 2016). DHS establishes IEFA fees by using a USCIS activity-based cost model for assigning all projected IEFA costs to specific benefit requests in a manner reasonably consistent with OMB Circular A-25. *See* OMB Circular A-25, *User Charges* (Revised), para. 6, 58 FR 38142 (July 15, 1993). USCIS costs that are not attributed to a specific adjudication and naturalization service are distributed among all fees.<sup>3</sup>

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<sup>2</sup> *See* 81 FR 26904, 26905 (May 4, 2016).

<sup>3</sup> The USCIS model for IEFA fee calculations distributes indirect costs. Costs that are not assigned to specific fee-paying immigration benefit requests are reallocated to other fee-paying immigration benefit requests outside the model. For example, the model determines the direct and indirect costs for refugee workload. The costs associated

DHS then makes additional adjustments to effectuate specific policy objectives.<sup>4</sup> However, when DHS creates new USCIS programs through separate rulemakings that require adjudication resources, a fee is necessary to recover the costs of those resources even where the exact costs are difficult to estimate until the program is operational. For example, DHS created the Application for Provisional Unlawful Presence Waiver, Form I-601A, and established the filing fee for the Form I-601A as the same fee as USCIS Form I-601, Application for Waiver of Ground of Inadmissibility, because the adjudication time required for both forms was thought to be the same. *See, e.g.*, 77 FR 19902-01, at 19910 (Apr. 2, 2012). The actual burden of the Form I-601A adjudication was unknown because the program had not been implemented. Similarly, when DHS established the fee for the Application for Entrepreneur Parole, Form I-941, to recover the anticipated processing costs to USCIS, the fee was based on burden estimates and workload forecast provided by USCIS' subject matter experts. *See*, 81 FR 60130-68, at 60159 fn. 93 (Aug. 31, 2016) (providing that the fee would be adjusted in the future based on the actual average completion rate). DHS is also not establishing the H-1B registration fee using the same method that it uses to establish the overall USCIS fee schedule because, as with any totally new program, the costs of the registration program are difficult to project. Infrastructure investments generally, including information technology platforms, usually serve multiple programs and functions across all business needs for USCIS. Those types of investments are not tracked as costs of a specific benefit request. In this case, the H-1B Registration system will not be a totally separate system and will be established within a platform that supports other USCIS

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with services provided for free, such as the refugee workload, are reallocated outside the model to fee-paying immigration benefit requests.

<sup>4</sup> DHS may reasonably adjust fees based on value judgments and public policy reasons where a rational basis for the methodology is propounded in the rulemaking. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

functions. Nevertheless, as explained below, DHS knows that the registration program will require USCIS to incur certain costs and burdens for iterative development, correcting problems, handling help desk calls, and adding or maintaining infrastructure. Therefore, DHS is authorized by INA section 286(m), 8 U.S.C. 1356(m), to recover these costs through a fee.

The H-1B registration final rule estimated that the H-1B registration process will be an overall cost savings to the government. DHS estimated that H-1B registration will save an estimated \$1.6 million annually when it is required.<sup>5</sup> USCIS will, however, have to expend a total of about \$1.5 million on the initial development of the registration website. This cost to the government is considered a one-time cost. At the time, DHS recognized that there may be a need to recover the costs of processing registrations as well as recover costs of building, operating, and maintaining the registration system or costs from refining the registration system in the future. *See* 84 FR 888, 903. DHS was not able to estimate these additional maintenance costs. Even if USCIS were not to collect the fee proposed in this rule, it would anticipate a net savings from the removal of costs associated with the management of the large volume of paper filings. USCIS continues to anticipate those cost savings. Regardless of the net benefits provided by the registration system over the current process, USCIS will still incur costs directly from operating the registration system. USCIS expects this \$10 fee to help offset the startup costs, such as building the information technology platform. USCIS will not achieve the expected savings from the registration requirement during the implementation period, but USCIS will realize those savings in later years.

The H-1B registration final rule also estimated that the H-1B registration process will result in an average undiscounted cost savings for all unselected petitioners ranging from \$42.7

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<sup>5</sup> *See* 84 FR 888, 890.

million to \$66.8 million annually, depending on who petitioners use to submit the registration.<sup>6</sup>

In contrast, the H-1B registration final rule determined there would not be cost savings for petitioners whose registrations were selected; rather these petitioners would experience new opportunity costs ranging from between \$6.2 million to \$10.3 million annually due to the registration requirement.<sup>7</sup> In this proposed rule's Executive Order (E.O.) 12866 analysis, DHS estimates that the proposed \$10 registration fee requirement would impose annual costs to registrants ranging from \$2.3 million to \$2.6 million, depending on who petitioners use to submit the registration. The total costs to petitioners for each registration would range from \$15.63 to \$30.80 for a registration, depending on who the petitioner uses to submit the registration.

Therefore, DHS acknowledges that the proposed \$10 fee for H-1B registrations would result in a marginal increase in costs for selected petitioners, and that the costs for such petitioners estimated in the H-1B registration final rule would now range from \$8.5 million to \$12.9 million,<sup>8</sup> depending on who petitioners use to submit the registration. Likewise, the costs savings for unselected petitioners estimated in the H-1B registration final rule would decrease and now range from \$40.4 million to \$64.2 million.<sup>9</sup> However, the H-1B registration process,

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<sup>6</sup> Unselected petitioners are those who submitted registrations but whose petitions were not selected toward the regular cap or toward the advanced degree exemption. *See* 84 FR at 940. *Note:* Following publication of the H-1B registration final rule, USCIS recognized a calculation error. The cost figures referenced in the paragraph above are the corrected cost savings.

<sup>7</sup> *See* 84 FR at 938.

<sup>8</sup> Calculations: \$6.2 million (cost to selected petitioner, lower bound) + \$2.3 million (total costs of added registration fee, lower bound) = \$8.5 million (cost for selected petitioner with added \$10 registration fee, lower bound). \$10.3 million (cost to selected petitioner, upper bound) + \$2.6 million (total costs of added registration fee, upper bound) = \$12.9 million (cost for selected petitioner with added \$10 registration fee, upper bound).

<sup>9</sup> Calculations: \$42.7 million (savings to unselected petitioner, lower bound) - \$2.3 million (total costs of added registration fee, lower bound) = \$40.4 million (savings for unselected petitioner with added \$10 registration fee, lower bound). \$66.8 million (savings to unselected petitioner, upper bound) - \$2.6 million (total costs of added registration fee, upper bound) = \$64.2 million (savings for unselected petitioner with added \$10 registration fee, upper bound).



even with the costs associated with the proposed registration fee requirement,<sup>10</sup> would still result in net estimated cost savings for all unselected petitioners.

Again, there are expected to be both initial start-up costs and recurring costs associated with the registration process. DHS intends for the registration system to be ready prior to the initial implementation of the H-1B registration process, which may be as soon as the H-1B cap filing season for FY 2021.<sup>11</sup> These initial costs will be funded by IEFA revenue from other fees. These initial costs will be sunk costs that will not reoccur annually.<sup>12</sup>

In addition to the estimated costs in the H-1B registration final rule, there would be recurring costs every year, such as information technology purchases, maintenance, and administrative costs. Administrative costs will include costs to implement the requirement that USCIS select a sufficient number of registrations, based on USCIS projections, for beneficiaries on whose behalf petitions will be filed under the H-1B regular cap or those who may be eligible for the advanced degree exemption from the submitted registrations. The selection process also includes administrative costs associated with monitoring the system for potential fraud and abuse (e.g. monitoring the system to determine if employers are submitting many registrations but filing petitions based on selected registrations at a significantly lower rate, which could reflect gaming of the system to unfairly improve their odds of being selected). The selection processes for the regular cap and the advanced degree exemption may occur multiple times in a fiscal year,

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<sup>10</sup> As explained later in the preamble, based on 2016 filings, every unique petitioning employer files requests for an average of slightly less than 5 H-1B cap-subject workers. The average petitioning employer therefore would incur fee costs of approximately \$50 as a result of this proposed rule.

<sup>11</sup> In the H-1B Registration final rule, DHS indicated that it is suspending the H-1B registration process for FY 2020, and indicated that it will publish a notice in the Federal Register in advance of the cap season in which it will first implement the H-1B registration process. 84 FR at 889.

<sup>12</sup> In the H-1B Registration final rule, DHS indicated that USCIS will have to expend a total of about \$1.5 million in the initial development of the registration website. This cost to the government is considered a one-time cost. *See* 84 FR 888.

depending on how many of the selected registrants file petitions.<sup>13</sup> The proposed \$10 fee would recover these reoccurring costs that were not included in the H-1B registration final rule.

USCIS lacks sufficient data to estimate reoccurring costs for such items as associated employee salaries, benefits and training, hardware updates, and software maintenance.<sup>14</sup> Therefore, DHS is proposing a \$10 fee that would provide revenue to mitigate potential fiscal effects on USCIS.<sup>15</sup> DHS estimated 192,918 H-1B cap-subject registrations annually.<sup>16</sup> The proposed \$10 fee accordingly would generate \$1,929,180 in revenue. This registration revenue would avoid funding the process with other IEFA fee revenue. While DHS does not know if the proposed \$10 fee will fully fund the recurring costs of H-1B registration, we believe that proposing a small fee is better than funding the reoccurring costs with revenue from other fees.

The U.S. Government Accountability Office (GAO), an independent, nonpartisan agency that works for Congress, describes equity of federal user fees<sup>17</sup> as a balancing act between two principles:

- Beneficiary-pays; and
- Ability-to-pay.

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<sup>13</sup> The H-1B registration final rule recognizes that some selected registrants might not ultimately file petitions. *See* 84 FR 888, 906. The final rule, therefore, provides that unselected registrations will remain on reserve in the system for the applicable fiscal year. *See* 8 CFR 214.2(h)(8)(iii)(A)(7). If USCIS determines that it needs to increase the number of registrations projected to meet the H-1B regular cap or advanced degree exemption allocation, and select additional registrations, USCIS would select from among the registrations that are on reserve a sufficient number to meet the revised projection(s) or re-open the registration period if additional registrations are needed to meet the revised projection(s). *Id.*

<sup>14</sup> The H-1B registration process was recently established. *See* 84 FR 888 (Jan. 31, 2019). While the rule went into effect on April 1, 2019, the implementation of the registration process has been suspended for FY 2020 to allow USCIS to make modifications and fully test the electronic H-1B registration system.

<sup>15</sup> Commenters on the proposed rule stated that they were concerned that the system would be flooded by frivolous registrations. *See* 84 FR 899. Thus, while the purpose of the fee is to recover the costs of the system, the registration fee may have an added benefit of deterring frivolous registrations.

<sup>16</sup> *See* 84 FR at 925.

<sup>17</sup> U.S. Government Accountability Office, *Federal User Fees: A Design Guide* (May 29, 2008), available from <https://www.gao.gov/products/GAO-08-386SP>, visited Mar. 14, 2019.

Under the beneficiary-pays principle, the beneficiaries of a service pay for the cost of providing that service. If the general public benefits from the service, then taxes should pay for it. If a small subset of people benefit, then users should pay a fee for it. *See* GAO-08-386SP at pg. 7-12.

Under the ability-to-pay principle, those who are more capable of bearing the burden of fees should pay more for the service than those with less ability to pay. IEFA fee exemptions, fee waivers, and reduced fees for low income households adhere to this principle. *See generally* 8 CFR 103.7(b)(1), (c) (USCIS fees, exemptions and waivers). Applicants, petitioners, and requesters who pay a fee cover the cost of processing requests that are fee-exempt, fee-waived, or fee-reduced.

DHS believes the proposed \$10 registration fee adheres to both of these user fee principles. Because this fee is designed to offset costs occurring with the new H-1B registration process, applying this fee at the point-of-registration on a per registration basis ensures that the fee is incurred by users specifically benefitting from the use of the registration system - the beneficiary pays principle. DHS also believes that a \$10 registration fee adheres to the ability-to-pay-principle because H-1B petitioners have demonstrated an ability and willingness to incur significant filing fees to petition for H-1B nonimmigrant workers. H-1B petitioners currently pay a \$460 filing fee per petition. In addition to the filing fee, certain H-1B petitions may have to pay up to \$6,000 in statutory fees. DHS does not have the authority to adjust the amount of these statutory fees. USCIS does not keep most of the revenue. CBP receives 50 percent of the \$4,000 9-11 Response and Biometric Entry-Exit fee and the remaining 50 percent is deposited into the General Fund of the Treasury. USCIS retains 5 percent of the \$1,500 or \$750 American Competitiveness and Workforce Improvement Act (ACWIA) fee. The remainder goes to the

Department of Labor and the National Science Foundation. USCIS keeps one third of the \$500 Fraud Detection and Prevention fee, while the remainder is split between the Department of State and the Department of Labor. These statutory fees are in addition to the current Form I-129 fee of \$460 and optional premium processing fee of \$1,410.<sup>18</sup> Given the significant amount of fees H-1B petitioners already incur, DHS believes that the proposed \$10 registration fee is de minimis and consistent with the ability-to-pay-principle.

DHS acknowledges that if the proposed \$10 fee is more than the cost to administer the registration process, then the fee would not adhere to the beneficiary-pays principle. In that case, the proposed \$10 fee would subsidize other IEFA fees. Once the process is in place, USCIS will monitor registration volume and level of effort associated with registration selection. In accordance with the requirements and principles of the Chief Financial Officers Act (CFO Act) of 1990, 31 U.S.C. 901-03 and Office of Management and Budget (OMB) Circular A-25, USCIS conducts biennial reviews of the non-statutory fees deposited into the IEFA and proposes fee adjustments if necessary to ensure full cost recovery. If a registration fee is finalized as proposed, USCIS would evaluate the data on the registration fee during future biennial fee reviews to determine whether a fee adjustment is necessary to ensure full cost recovery.

## **V. Statutory and Regulatory Reviews**

### ***A. Executive Orders 12866 (Regulatory Planning and Review), and 13563 (Improving Regulation and Regulatory Review)***

Executive Orders 12866 and 13563 direct agencies to assess the costs, benefits, and transfers of available alternatives, and if regulation is necessary, to select regulatory approaches

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<sup>18</sup> See USCIS, H and L Filing Fees for Form I-129, Petition for a Nonimmigrant Worker, <https://www.uscis.gov/forms/h-and-l-filing-fees-form-i-129-petition-nonimmigrant-worker> (last updated/reviewed Feb. 20, 2018).

that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Information and Regulatory Affairs (OIRA) has designated this rule a “significant regulatory action” – although not an economically significant regulatory action – under section 3(f) of Executive Order 12866. Accordingly, OIRA has reviewed this rule.

### *1. Summary*

DHS is proposing to amend its regulations to require a fee for each registration submitted to register for the H-1B cap selection process. DHS is proposing a fee of \$10 per registration to recover some of the costs that are associated with implementing and maintaining the H-1B cap registration system. USCIS has suspended the registration requirement for the FY 2020 H-1B cap selection process. DHS recognizes that the registration requirement was established to provide efficiency savings to both USCIS and H-1B cap-subject petitioners associated with the current paper-based petitioning process. In the H-1B registration final rule, DHS estimated significant cost savings for both USCIS and those H-1B petitioners. DHS stands by that analysis and believes that USCIS would still reap significant efficiency and cost savings when comparing an electronic registration process relative to the current paper filing process. DHS acknowledges that the \$10 registration fee would reduce some of the estimated cost savings for unselected H-1B cap-subject petitioners as described in the H-1B registration final rule. As discussed in the Regulatory Review section, DHS does not believe that the proposed registration fee would significantly factor into the decision-making of potential H-1B petitioners, nor does DHS believe that the proposed fee would be perceived as being cost-prohibitive by these potential H-1B

petitioners. After the registration requirement is implemented and reviewed over the coming years, and if the proposed registration fee is finalized, DHS would consider the costs associated with the system as required during biennial fee reviews and adjust the registration fee accordingly via notice-and-comment rulemaking.

## *2. Analysis of Costs and Benefits*

When registration is required, all petitioners seeking to file an H-1B cap-subject petition, including those eligible for the advanced degree exemption, must first electronically register with USCIS during a designated registration period. A separate registration must be submitted for each worker on whose behalf a petitioner seeks to file an H-1B cap-subject petition. Only those petitioners whose registrations are selected will be eligible to file an H-1B cap-subject petition during an associated filing period for the applicable fiscal year. Under this proposed rule, each registration would require the \$10 proposed registration fee, which would be due and payable at the time of registration submission. A registration would not be considered as properly submitted until the fee is paid.<sup>19</sup> In the analysis accompanying the H-1B registration final rule, DHS estimated that 192,918 H-1B cap-subject registrations will be submitted annually based on 5-year historical average Form I-129 petition filings.<sup>20</sup> That estimate will form the baseline for the analysis of costs associated with the \$10 registration fee being proposed. As DHS acknowledged in the H-1B registration final rule, the use of this historical average to form the baseline estimate does not factor in the possibility that the registration's lower barrier to entry could result in increasing the number of registrations that USCIS receives.<sup>21</sup> To account for this

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<sup>19</sup> See 8 CFR 103.2(a)(1) and 8 CFR 214.2(h)(8)(iii)(A)(I).

<sup>20</sup> See 84 FR at 925.

<sup>21</sup> *Id.*

possibility, this analysis will present a range analysis of annual costs up through an escalator of 30 percent increase over the baseline estimate.

Table 1 presents the annual, undiscounted, aggregate costs associated with the proposed \$10 registration fee using a range of escalations over the baseline estimate of registrations.

<b>Table 1. Undiscounted Aggregate Cost Estimates by Projected Registrations</b>		
	Number of Registrations	Annual Cost - Undiscounted
Baseline	192,918	\$1,929,180
Baseline Plus 10%	212,210	\$2,122,100
Baseline Plus 20%	231,502	\$2,315,020
Baseline Plus 30%	250,793	\$2,507,930

USCIS is required to review the cost of its operations on a biennial basis and recommend fee adjustments as necessary. USCIS may adjust the filing fees for immigration benefits and services through notice-and-comment rulemaking. DHS used a 5-year period of analysis to account for a potential time lag of the fee review and the actual adjustment that occurs during the rulemaking cycle. Therefore, it is reasonable to conclude that a 5-year period would be a sufficient period for DHS to base the analysis of the estimated impact of this proposed registration fee.

In addition to the \$10 registration fee, USCIS projects there would be a 7-minute additional time burden associated with reading the instructions and completing the electronic fee payment. In the H-1B registration final rule, DHS monetized time burdens based on who is expected to submit the registration: a human resource (HR) specialist; an in-house lawyer; or an outsourced lawyer.<sup>22</sup> The relevant wage is currently \$32.11<sup>23</sup> per hour for an HR specialist and

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<sup>22</sup> See 84 FR at 929.

\$69.34<sup>24</sup> per hour for an in-house lawyer. DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using the Department of Labor, BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.46 and, therefore, is able to estimate the full opportunity cost per applicant, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, and retirement.<sup>25</sup> DHS multiplied the average hourly U.S. wage rate for HR specialists and lawyers by 1.46 to account for the full cost of employee benefits and overhead, for a total of \$46.88<sup>26</sup> per hour for an HR specialist and \$101.24<sup>27</sup> per hour for an in-house lawyer. DHS recognizes that a firm may choose, but is not required, to outsource the preparation of these petitions and, therefore, has presented two wage rates for lawyers. To determine the full opportunity costs if a firm hired an outsourced lawyer, DHS multiplied the average hourly U.S. wage rate for lawyers by 2.5 for a total of \$173.35<sup>28</sup> to approximate an hourly billing rate for an outsourced lawyer.<sup>29</sup> The monetized equivalent time burden for 7 minutes (0.12 hours) is

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<sup>23</sup> Bureau of Labor Statistics, U.S. Department of Labor, “Occupational Employment Statistics, May 2018, Human Resources Specialist”: <https://www.bls.gov/oes/2018/may/oes131071.htm>. Visited April 26, 2019.

<sup>24</sup> Bureau of Labor Statistics, U.S. Department of Labor, “Occupational Employment Statistics, May 2017, Lawyers”: <https://www.bls.gov/oes/2018/may/oes231011.htm>. Visited April 26, 2019.

<sup>25</sup> The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) / (Wages and Salaries per hour). *See* Economic News Release, U.S. Dep’t of Labor, Bureau of Labor Statistics, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (September 2018), available at [https://www.bls.gov/news.release/archives/ecec\\_12142018.pdf](https://www.bls.gov/news.release/archives/ecec_12142018.pdf) (viewed March 8, 2019). The ECEC measures the average cost to employers for wages and salaries and benefits per employee hour worked.

<sup>26</sup> Calculation:  $\$32.11 * 1.46 = \$46.88$  total wage rate for HR specialist.

<sup>27</sup> Calculation:  $\$69.34 * 1.46 = \$101.24$  total wage rate for in-house lawyer.

<sup>28</sup> Calculation:  $\$69.34 * 2.5 = \$173.35$  total wage rate for an outsourced lawyer.

<sup>29</sup> *See* 83 FR at 24914 (May 31, 2018). The DHS analysis in, “Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program” used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages. DHS believes the



\$5.63,<sup>30</sup> \$12.15,<sup>31</sup> and \$20.80<sup>32</sup> for an HR specialist, in-house lawyer, and outsourced lawyer, respectively.

Based on a review of historical filings, USCIS determined that approximately 75 percent of H-1B cap-subject petitions are filed by an attorney or accredited representative.<sup>33</sup> This analysis will carry that finding forward in estimating the time burden costs for complying with the proposed registration fee requirement. In other words, the analysis of time burden costs presented assumes that 25 percent of the registrations will be completed by an HR specialist or representative, and 75 percent of the registrations will be completed by an attorney, either in-house or outsourced. Table 2 presents the annual, undiscounted, time burden or opportunity costs associated with paying the registration fee electronically, assuming 7 minutes of time burden, over a range of estimated numbers of registrations and according to who submits the H-1B registration.

**Table 2. Annual Time Burden Cost (undiscounted) by Projected Registrations & Type of Submitter, rounded**

	Number of	HR Specialist <sup>34</sup>	In-House	Outsourced
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methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule.

<sup>30</sup> Calculation: \$46.88 hourly wage rate for HR specialist \* 0.12 hours = \$5.63

<sup>31</sup> Calculation: \$101.24 hourly wage rate for in-house lawyer \* 0.12 hours = \$12.15

<sup>32</sup> Calculation: \$173.35 hourly wage rate for outsourced lawyer \* 0.12 hours = \$20.80

<sup>33</sup> See 84 FR at 925.

<sup>34</sup> Calculation: Number of Registrations \* 25 percent \* \$5.63 (figures presented in the table are rounded to the nearest dollar)

	Registrations		Lawyer <sup>35</sup>	Lawyer <sup>36</sup>
Baseline	192,918	\$271,532	\$1,757,965	\$3,009,521
Baseline Plus 10%	212,210	\$298,686	\$1,933,764	\$3,310,476
Baseline Plus 20%	231,502	\$325,839	\$2,109,562	\$3,611,431
Baseline Plus 30%	250,793	\$352,991	\$2,285,351	\$3,912,371

Note that the cost estimates in Table 2 are overstated because they do not account for the scenario of fewer unique entities submitting registrations for multiple workers. DHS assumes that in those cases, the registration submissions would be done at the same time so the fee payment could be bundled. The DHS analysis in the H-1B registration final rule found that, on average, each employer submitted five petitions.<sup>37</sup> Thus, the estimate of undiscounted costs in Table 2, which is based on the assumption of one petitioning employer filing one petition, is likely overstated by approximately 80 percent. Estimates that are more likely to reflect the current business behavior of five petitions per employer, are presented in Table 3.

<b>Table 3. Annual Time Burden Cost (undiscounted) by Projected Registrations &amp; Type of Submitter, Less 80%</b>				
	Number of Registrations	HR Specialist	In-House Lawyer	Outsourced Lawyer
Baseline	192,918	\$54,306	\$351,593	\$601,904
Baseline Plus 10%	212,210	\$59,737	\$386,753	\$662,095
Baseline Plus 20%	231,502	\$65,168	\$421,912	\$722,286
Baseline Plus 30%	250,793	\$70,598	\$457,070	\$782,474

<sup>35</sup> Calculation: Number of Registrations \* 75 percent \* \$12.15 (figures presented in the table are rounded to the nearest dollar)

<sup>36</sup> Calculation: Number of Registrations \* 75 percent \* \$20.80 (figures presented in the table are rounded to the nearest dollar)

<sup>37</sup> See 84 FR at 948 (January 31, 2019) for the FY 2016 cohort of H-1B cap-subject petitions selected. Of the 95,839 petitions selected, there were only 20,046 unique entities that filed those petitions. Calculation: 95,839/20,046 = 4.78.

Therefore, the total, undiscounted, aggregate annual costs of both the proposed fee and time burden costs are presented in Table 4. The figures in Table 4 are found by adding the proportional costs presented in Table 1 (i.e. assume 25% of registrations are completed by HR specialist and 75 percent of registrations are completed by lawyers either in-house or outsourced) with the estimated costs for entities submitting registrations in Table 3.

<b>Table 4. Aggregate Cost (undiscounted) by Projected Registrations &amp; Type of Submitter</b>				
	Number of Registrations	HR Specialist (Table 3 + 25% of Table 1)	In-House Lawyer (Table 3 + 75% of Table 1)	Outsourced Lawyer (Table 3 + 75% of Table 1)
Baseline	192,918	\$536,601	\$1,798,478	\$2,048,789
Baseline Plus 10%	212,210	\$590,262	\$1,978,328	\$2,253,670
Baseline Plus 20%	231,502	\$643,923	\$2,158,177	\$2,458,551
Baseline Plus 30%	250,793	\$697,581	\$2,338,018	\$2,663,422

The lower bound aggregate cost estimate of complying with the proposed registration fee requirement is found by summing the estimated cost of using an HR specialist with the cost estimate of using in-house lawyers to complete the registration. The upper bound aggregate cost estimate is found by summing the estimated cost of using an HR specialist with the cost estimate of using outsourced lawyers to complete the registration. Table 5 presents the lower bound and upper bound aggregate cost estimates over the projected number of registrations for a 5-year period, discounted at 3 and 7 percent.

<b>Table 5. Transfer Cost Estimates by Projected Registrations over 5-year Period, Discounted at 3% and 7%</b>
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		5-Year Discounted Costs, 3%, (\$ Millions)		5-year Discounted Costs, 7%, (\$ Millions)	
	Number of Registrations	Lower Bound	Upper Bound	Lower Bound	Upper Bound
Baseline	192,918	\$10.7	\$11.8	\$9.6	\$10.6
Baseline Plus 10%	212,210	\$11.8	\$13.0	\$105.0	\$11.7
Baseline Plus 20%	231,502	\$12.8	\$14.2	\$11.5	\$12.7
Baseline Plus 30%	250,793	\$13.9	\$15.4	\$12.4	\$13.8

As discussed previously, while this proposed fee may not recover the full costs associated with implementing and maintaining the H-1B registration system, it would allow for USCIS to recover some of the costs, thus lessening the fiscal impact to USCIS. DHS does not anticipate this proposed registration fee to represent a significant business expense for those employers that seek to employ cap-subject H-1B workers. The total costs for each registration would range from \$15.63 to \$30.80 for a registration, depending on who the petitioner uses to submit the registration. Even with this proposed registration fee requirement, as discussed previously in the preamble, the registration process is still anticipated to result in a net benefit relative to the paper-based petition process.

This proposed fee may also provide some unquantified benefits to the extent that the fee may deter frivolous registrations. DHS makes no conclusions on the impact that a \$10 fee would have on the number of registrations and has no way to estimate such an impact. As stated in the H-1B registration final rule, however, commenters on the H-1B registration proposed rule expressed various concerns about potential “flooding” of the registration system. While there is no way to estimate if a small fee would further deter such acts, beyond the measures identified in the H-1B registration final rule (e.g., the attestation requirement), DHS believes that it is

reasonable to conclude that the existence of a \$10 fee would reduce the likelihood that frivolous registrations would be submitted to flood or otherwise game the registration system. In any event, such a benefit would only be tangential to the fee's primary purpose of recovering USCIS costs.

#### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small entities during the development of their rules. The term "small entities" comprises of small businesses, not-for-profit organizations that are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. An "individual" is not defined by the RFA as a small entity and costs to an individual from a rule are not considered for RFA purposes. In addition, the courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates small entities. Consequently, any indirect impacts from a rule to a small entity are not considered as costs for RFA purposes.

This proposed rule would have direct impacts to those entities that petition on behalf of H-1B cap-subject workers. Generally, H-1B petitions are filed by a sponsoring employer; by proxy, once the online registration requirement is implemented, registrations would likewise be submitted by a sponsoring employer or their authorized representative. The employer intending to petition for an H-1B cap-subject worker would incur the registration fee costs of \$10 per registration as proposed. Therefore, DHS examines the direct impact of this proposed rule on small entities in the analysis that follows.

DHS estimated that approximately 78 percent of selected H-1B petitioners were small entities after conducting an analysis of a statistically significant sample.<sup>38</sup> Therefore, DHS believes it is reasonable to carry this finding through and assume that approximately 78 percent, a majority, of H-1B registrations would be submitted by small entities. Thus, for purposes of the RFA, this proposed rule would impact a “substantial” number of small entities.

To determine whether the impact of the proposed registration filing fee would be “significant,” DHS must consider the estimated fee impacts of individual petitioning small entities. In the H-1B registration final rule, DHS found that the majority of petitioning employers tended to submit petitions for multiple employees. Based on a review of filings received in 2016, DHS determined that for every one unique petitioning employer, there were an average of 4.78 petitions submitted.<sup>39</sup> For purposes of this analysis, DHS is rounding that figure up to form a baseline assumption that for every one petitioning employer, a total of five H-1B cap-subject workers are requested. Therefore, it is reasonable to conclude that on average each petitioning employer that is a small entity would face a total fee impact of \$50, plus a one-time monetized time burden impact ranging from \$5.58 to \$20.47, as a result of this proposed H-1B registration fee.<sup>40</sup>

In that same statistically valid sample study, DHS was able to determine the top 10 industries that petitioned for cap-subject H-1B workers.<sup>41</sup> The industry data, using the North American Industry Classification System (NAICS), is self-reported on USCIS Form I-129,

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<sup>38</sup> See 84 FR at 948-49.

<sup>39</sup> See 84 FR at 948, explaining that, for the FY 2016 cohort, 20,046 unique entities filed the 95,839 H-1B cap-subject petitions that were selected. Calculation:  $95,839/20,046 = 4.78$ .

<sup>40</sup> Calculation: \$10 (proposed registration fee) x 5 registrations (one for each H-1B worker being entered into the registration) = \$50 total fee impact for employers

<sup>41</sup> See 84 FR at 950.

Petition for Nonimmigrant Worker, which petitioning employers use to petition for H-1B workers. Table 6 shows a list of the top 10 NAICS industries that submitted H-1B cap-subject petitions in the sample study, and the corresponding size standard according to the SBA.

<b>Table 6: Top 10 NAICS Industries Submitting Form I-129, Small Entity Analysis Results.</b>				
<b>Rank</b>	<b>NAICS Code</b>	<b>NAICS U.S. Industry Title</b>	<b>Size Standards in millions of dollars</b>	<b>Size Standards in number of employees</b>
<b>1</b>	541511	Custom Computer Programming Services	\$27.5	-
<b>2</b>	541512	Computer Systems Design Services	\$27.5	-
<b>3</b>	561499	All Other Business Support Services	\$15.0	-
<b>4</b>	541330	Engineering Services	\$15.0	-
<b>5</b>	511210	Software Publishers	\$38.5	-
<b>6</b>	541611	Administrative Management and General Management Consulting Services	\$15.0	-
<b>7</b>	334413	Semiconductor and Related Device Manufacturing	-	1,250
<b>8</b>	541618	Other Management Consulting Services	\$15.0	-
<b>9</b>	541690	Other Scientific and Technical Consulting Services	\$15.0	-
<b>10</b>	325412	Pharmaceutical Preparation Manufacturing		1,250
Source: USCIS analysis based on small business size standards. <i>Note:</i> The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act and those size standards can be found in 13 C.F.R., section 121.201.				

SBA’s monetary size standard is based on the average annual receipts of the business entity. As discussed previously, DHS has determined that the majority of H-1B petitioning employers would be classified as “small” for purposes of the RFA. However, comparing the expected total fee impact of \$55.58 on the low-end for every small entity (assuming each entity submits approximately five registrations) results in a negligible cost impact relative to average

annual receipts. In fact, for a cost of \$55.58, a company would need to have annual receipts of only \$5,558 for the cost of the fee to equal 1% of the annual receipts. If a company used an outsourced lawyer to petition for a visa at a cost of \$152.35 (\$30.47 filing fee plus time burden costs x 5 registrations) the company would need to have annual receipts of only \$15,235 for the cost of the fee to equal 1% of the annual receipts.

SBA guidance on additional measures to determine whether a rule would have a significant impact suggest comparing the compliance cost to the labor costs.<sup>42</sup> In that guidance, SBA states that an impact could be significant if the compliance cost “exceeds 5 percent of the labor costs of the entities in that sector.”<sup>43</sup> In the annual report to Congress on the characteristics of H-1B workers for fiscal year 2017, USCIS determined the median annual compensation for initial employment across all occupations was \$75,000.<sup>44</sup> Furthermore, the median annual compensation for initial employment across known occupations ranged from a low of \$42,000 to a high of \$160,000.<sup>45</sup> This proposed rule is estimated to result in compliance costs that represent much less than 5 percent of the H-1B labor costs.

Based on these findings, DHS certifies that while this proposed rule could impact a substantial number of small entities, the impact that would arise from the proposed \$10 registration fee would not result in a significant impact. Therefore, the Secretary certifies that this proposal would not cause a significant impact to a substantial number of small entities.

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<sup>42</sup> See U.S. Small Business Administration, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act*, The RFA threshold analysis: Can we certify? at Pg. 19, <https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf>. Visited Apr. 16, 2019.

<sup>43</sup> *Id.*

<sup>44</sup> See U.S. Citizenship and Immigration Services, *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2017 Annual Report to Congress*, at Table 11, <https://www.uscis.gov/sites/default/files/reports-studies/Characteristics-of-Specialty-Occupation-Workers-H-1B-Fiscal-Year-2017.pdf>. Visited Apr. 16, 2019.

<sup>45</sup> *Id.*



### *C. Other Regulatory Requirements*

This proposed rule is not a “major rule” as defined by the Congressional Review Act, 5 U.S.C. 804(2), and thus is not subject to a 60-day delay in the rule becoming effective. This action is not subject to the written statement requirements of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Orders 13132 or 13175. This proposed rule also does not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(2)(ii) and 1508.4. This action would not affect the quality of the human environment and fits within Categorical Exclusion number A3(d) in Dir. 023-01 Rev. 01, Appendix A, Table 1, for rules that interpret or amend an existing regulation without changing its environmental effect.

### *D. Expedited comment period.*

Section 6(a)(1) of EO 12866 requires an agency to afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. DHS has found it necessary to provide a 30-day comment period for this proposed rule. USCIS intends for the fee proposed in this rule to be in place before the H-1B registration process is initially implemented, which may be as soon as the H-1B cap filing season for FY 2021.<sup>46</sup> The requirements for developing, publishing and responding to comments on a rulemaking will require much of the time that DHS needs to put the fee and registration process in place, and the additional 30-days of comment period would put DHS at risk of not having the fee in place before the registration period begins. The population affected by this rule is not vast, and the issues addressed by it are relatively insular.

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<sup>46</sup> USCIS will announce the start of the initial registration period at least 30 calendar days in advance of such date. See 84 FR at 898-99. 8 CFR 214.2(h)(8)(iii)(A)(3).

Therefore, DHS has concluded that the need for the certainty in having the fee established or not, justifies a 30-day comment period.

As discussed in the following section, as required by 5 CFR 1320.8(d)(1), DHS is providing a 60-day public comment period for the revisions to the approved collection of information that would be required by this rule. DHS will read, consider, draft responses, and revise the rule as necessary while the additional comments on the registration system and information collections continue to be received.

#### *E. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3512, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the *Federal Register* to obtain comments regarding the proposed edits to the respective information collections. DHS is revising the information collections for two USCIS currently approved OMB control numbers as follows.

#### **H-1B Registration Tool**

DHS and USCIS are revising this information collection to report a change in the estimated annual cost to the Federal government as a result of the proposed rule. Additionally, the information collection instrument has been revised to include language about the proposed fee.

Comments are encouraged on the proposed revisions to the information collection instruments and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0144 in the body of the letter

and the agency name. To avoid duplicate submissions, please use only one of the methods under the ADDRESSES and Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection:

- (1) Type of Information Collection: Revision of a Currently Approved Collection.
- (2) Title of the Form/Collection: H-1B Registration Tool.
- (3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: No Agency Form Number; USCIS.
- (4) Affected public who will be asked or required to respond, as well as a brief abstract:  
Primary: Business or other for-profit. USCIS uses the data collected on this form to determine which employers will be informed that they may submit a USCIS Form I-129, Petition for a Nonimmigrant Worker, to petition for a beneficiary in the H-1B classification.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection H-1B Registration Tool is 192,918 and the estimated hour burden per response is 0.5 hours. Any additional time burden for fee payment processing is captured in the information collection USCIS Electronic Fee Payment Processing (OMB 1615-0131).

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 96,459 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total cost burden for purchases of equipment or services to achieve compliance with the information collection requirements of this rule (not including providing information to or keeping records for the government, or kept as part of customary and usual business or private practices), are \$0.<sup>47</sup> There are no capital, start-up, operational or maintenance costs to respondents associated with this collection of information.

### **USCIS Electronic Payment Processing**

DHS is revising this information collection to add an estimated 192,918 new respondents that would be required to utilize it to pay their H-1B Registration fee.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615-0131 in the body of the letter and the agency name. To avoid duplicate submissions, please use only one of the methods under the **ADDRESSES** and **I. Public Participation** section of this rule to

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<sup>47</sup> As stated elsewhere in this rule, the annual transfer cost for registrants associated with the proposed \$10 fee is \$1,929,180.

submit comments. Comments on this information collection should address one or more of the following four points:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection:

- (1) Type of Information Collection: Revision of a Currently Approved Collection.
- (2) Title of the Form/Collection: USCIS Electronic Payment Processing.
- (3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: G-1450; USCIS.
- (4) Affected public who will be asked or required to respond, as well as a brief abstract:  
Primary: Business or other for-profit. USCIS allows for credit card payments via Form G-1450 and via the pay.gov online portal. Form G-1450 facilitates credit card payments for paper-filed benefit requests submitted through the USCIS Lockbox. Credit card information is collected on Form G-1450 to allow USCIS to track payment of the fee necessitated by the respondent's activity with USCIS, and to reconcile the payment received in the Treasury, Financial

Management Service, Federal Financial Management System (FFMS) with the respondent's file. Credit card payments for electronically filed benefit requests are handled through the pay.gov online portal. USCIS does not receive credit card information for respondents using the pay.gov portal. USCIS only receives confirmation of payment and tracking details to allow matching of the payment with the benefit request filed. H-1B registrations can only be submitted electronically, so all H-1B registration fees will be processed through the pay.gov online portal.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection USCIS Electronic Payment Processing, where respondents are individuals or households, is 1,805,284 and the estimated hour burden per response is 0.12 hours; the estimated total number of respondents for the information collection Form G-1450 is 1,017,839 and the estimated hour burden per response is 0.12 hours; the estimated total number of respondents for the information collection USCIS Electronic Payment Processing, where respondents are businesses or other small entities, is 658,548 and the estimated hour burden per response is 0.12 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 417,800.52 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with the collection of information associated with this rulemaking, including purchases of equipment or services to achieve regulatory compliance,

providing information to, or keeping records for the government are \$0.<sup>48</sup> There is no cost to respondents for paying a fee to USCIS.

### **List of Subjects in 8 CFR Part 103**

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements.

Accordingly, DHS is proposing to amend chapter I of title 8 of the Code of Federal Regulations as follows:

### **PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS;**

#### **AVAILABILITY OF RECORDS**

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1356b, 1372; 31 U.S.C. 9701; Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 1 et seq.); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112-54, 125 Stat 550..

2. Section 103.7 is amended by adding paragraph (b)(1)(i)(NNN) to read as follows:

#### **§ 103.7 Fees.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(NNN) Registration requirement for petitioners seeking to file H-1B petitions on behalf of cap-subject aliens. For each registration submitted to register for the H-1B cap or advanced

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<sup>48</sup> As stated elsewhere in this rule, the estimated opportunity cost for registrants to provide the information necessary to pay the proposed fee could range from \$215,000 to \$789,000 depending on who submits the payment.

degree exemption selection process: \$10. This fee will not be refunded if the registration is not selected or is withdrawn.

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Kevin K. McAleenan,  
Acting Secretary.

[FR Doc. 2019-18962 Filed: 9/3/2019 8:45 am; Publication Date: 9/4/2019]